

## PAY ADMINISTRATION

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) procedures regarding pay administration.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook contains mandatory VA procedures on pay administration. The pages in this issuance replace the corresponding page numbers in VA Handbook 5007. Part VIII, Chapter 19 is added. Revised text is contained in brackets. This chapter incorporates the guidance contained in Human Resources Management Letter 05-11-05 regarding the payment of reservist differential into permanent VA policy. These changes will be incorporated into the electronic version of VA Handbook 5007 that is maintained on the [Office of Human Resources Management Web site](#).
- 3. RESPONSIBLE OFFICE:** The Compensation and Classification Service (055), Office of the Deputy Assistant Secretary for Human Resources Management.
- 4. RELATED DIRECTIVE:** VA Directive 5007, Pay Administration.
- 5. RESCISSIONS:** None.

**CERTIFIED BY:**

**BY DIRECTION OF THE SECRETARY  
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## [CHAPTER 19. RESERVIST DIFFERENTIAL

### 1. GENERAL

a. This chapter provides guidance for processing reservist differential for eligible Federal civilian employees who are members of the Reserve or National Guard (reservists) and have been called or ordered to active duty under certain specified provisions of law.

b. 5 U.S.C. § 5538, amended by section 745 of the Consolidated Appropriations Act, 2010 (Public Law 111-117, December 16, 2009), authorizes differential payments to eligible Federal civilian employees who are reservists. The Act requires agencies to make payments (reservist differential) to eligible employees equal to the amount by which projected civilian basic pay for a covered pay period exceeds an employee's actual military pay and allowances allocable to the same covered pay period.

**2. AUTHORITY.** 5 U.S.C. 5538 as enacted by Public Law 111-8, dated March 11, 2009.

**3. ENTITLEMENT.** Reservist differential is payable to Federal civilian employees who are members of the Reserve or National Guard and who are ordered or called to active duty in the uniformed services under a provision of law referred to in 10 U.S.C. § 101(a)(13)(B). During this absence the employee must meet both of the following conditions: serving on active military duty and entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) under 38 U.S.C. chapter 43. The amount payable is the difference between an employee's projected civilian basic pay and his or her actual military pay and allowances during periods in which the employee is not in a civilian pay status. Reservist differential is not payable for any period in which an employee receives civilian basic pay for performing work or using paid civilian leave or other paid time off (including annual, military or other paid leave).

**4. COVERED EMPLOYEES.** This chapter applies to all VA employees who meet the eligibility requirements under 38 U.S.C. § 4303(3), which defines an employee as any person who is a citizen, national, or permanent resident alien of the United States employed in a workplace in a foreign country by an employer that is an entity incorporated or otherwise organized in the United States or that is controlled by an entity organized in the United States, within the meaning of section 38 U.S.C. § 4319(c).

### 5. EXCLUSIONS

a. Any category of employee that is excluded from coverage under section 5 U.S.C. § 5538 by operation of law.

b. Any category of individual for whom there is a statutory provision expressly stating that the individual is not considered an employee of the Federal government for any purpose, or is considered an employee of the Federal government for limited purposes, not including 5 U.S.C. § 5538.

c. An individual loses eligibility for reservist differential effective on the date of separation from Federal service, as basic pay is not payable to a separated employee under 5 U.S.C. § 5538(a)(1).

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There is no entitlement to reservist differential if an employee chooses to separate from their Federal civilian position.

**6. DEFINITIONS.** For purposes of this chapter, the following definitions shall apply:

a. **Active Duty.** Full-time duty in the active military service of a uniformed service of the United States, including full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned under 10 U.S.C. § 101(d)(1). Such term does not include full-time National Guard Duty under 10 U.S.C. § (d)(5).

b. **Civilian Basic Pay.** The gross amount of basic pay before any deductions and without additional pay of any kind, with certain exceptions. See paragraph 8 for additional information.

c. **Employee or Covered Employee.** An employee as defined in 5 U.S.C. § 2105, excluding employees that are excluded by law from coverage under 5 U.S.C. § 5538. An individual who separates from Federal civilian service ceases to be an employee or covered employee.

d. **Military Leave.** Military leave provided under 5 U.S.C. § 6323, including regular military leave under 5 U.S.C. § 6323(a) and special military leave under 5 U.S.C. § 6323(b).

e. **Military Pay and Allowances.** The gross amount of pay and allowances before applying any deductions, forfeitures, collections, or other reductions. Includes military basic pay, basic allowance for housing (BAH), basic allowance for subsistence (BAS), and all other military pay and allowances, excluding travel, transportation, per diem allowances, related travel, and one-time annual payments such as clothing allowances or reenlistment bonuses. (See 5 U.S.C. § 5519, 5 U.S.C. § 6323(b) and (c), 37 U.S.C. § 101(25) and 37 U.S.C. § 910).

f. **Qualifying Active Duty.** Active duty by a covered employee pursuant to a call or order as described in 5 U.S.C. § 5538(a).

g. **Reservist.** Federal civilian employee who is a member of a reserve component – i.e., a member of a reserve component of the Army, Navy, Air Force or Marine Corps, or the Air National Guard of the United States, or the Army National Guard of the United States. (See 10 U.S.C. § 101).

h. **Reservist Differential.** The amount payable to an eligible reservist equal to the difference between the employee's projected civilian basic pay and his or her actual military pay and allowances during periods in which the employee is not in a civilian pay status.

i. **Uniformed Services Employment and Reemployment Rights Act (USERRA).** Protects reemployment rights for 'non-career and career' Veterans, Reservists, and National Guard members as codified in 38 U.S.C. Chapter 43.

**7. QUALIFYING PERIODS**

a. Reservist differential is payable only for periods when an employee is absent from a Federal civilian position to perform active duty in the uniformed service pursuant to a call or order to active duty under a provision of law referred to in 10 U.S.C. § 101(a)(13)(B) and is entitled to reemployment rights under USERRA during this time as provided in 38 U.S.C. chapter 43 and 5 CFR part 353, subparts A and B.

b. Active duty includes:

(1) An order from the President calling the militia of any State into Federal service to put down an insurrection in any State, under 10 U.S.C. § 331

(2) An order from the President calling into Federal service such of the militia of any State, or using such of the armed forces, when he considers it necessary to enforce Federal law or to suppress rebellion because of unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, under 10 U.S.C. § 332

(3) An order from the President by using the militia or armed forces or both, or by any other means, including the National Guard in Federal service, to restore public order and enforce the laws of the United States in situations of natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any State or possession of the United States, or to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, under 10 U.S.C. § 333

(4) 10 U.S.C. § 688

(5) 10 U.S.C. § 12301(a)

(6) 10 U.S.C. § 12302

(7) 10 U.S.C. § 12304

(8) 10 U.S.C. § 12305

(9) 10 U.S.C. § 12406

**NOTE:** *If a reservist performs qualifying active duty as described above, and the reservist's orders are later changed and reissued under 10 U.S.C. 12301(h) due to a combat injury, the reservist will be considered to still be performing qualifying active duty under the changed orders for the purpose of eligibility for a reservist differential.*

c. If the activation orders are under an authority other than those referenced in 10 U.S.C. § 101(a)(13)(B), the employee is not eligible for reservist differential. If the orders are not specific in citing the correct authority, the Human Resources Office (HRO) must contact the headquarters office that issued the orders for clarification prior to determining eligibility. (Additional guidance and information of the citations above and the types of qualifying military duty is available in

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the Office of Personnel Management (OPM) Policy Guidance, Appendix D (revised April 13, 2011), originally issued in OPM's CPM 2009-19 dated December 8, 2009.)

d. Reservist differential is not payable for periods during which the employee is receiving civilian basic pay for performing work or using civilian paid leave or other paid time off, nor is it payable for the period prior to or following completion of an active duty assignment. For example, if an employee receives civilian basic pay (through paid work or paid time off) for an entire biweekly pay period, reservist differential cannot be paid for that biweekly pay period. If an employee receives civilian basic pay for a portion of the pay period, reservist differential is computed for the portion of the pay period in which the employee did not receive civilian basic pay.

e. Other nonqualifying periods include any period in which an employee is placed in military nonpay status for conduct-related reasons (e.g. absent without leave (AWOL), confinement or desertion) during the qualifying active duty period. Those are nonqualifying days and are not to be considered when computing reservist differential. If an employee is separated from military duty for misconduct or other reasons that terminate USERRA reemployment rights, entitlement to reservist differential would also terminate at the time of separation. Military non-pay status dates should be listed in the Remarks of the military Leave and Earnings Statement (LES).

f. A qualifying period may begin or end in the middle of the employee's civilian biweekly pay period, and the days before or after the qualifying period are not used in computing reservist differential for the pay period. The computation of military pay and allowances and projected civilian basic pay for a pay period must be based solely on the days within the qualifying period, making it necessary to determine the days and hours the employee would have worked during the qualifying portion of the pay period.

g. Reservist differential is not available for employees who attempt to retroactively cancel paid leave or any other paid time off that was taken during the post-active duty period in order to receive reservist differential payments instead.

**8. CIVILIAN BASIC PAY AND LEAVE STATUS**

a. For purposes of computing reservist differential, civilian basic pay is defined by OPM as the gross amount of basic pay prior to applying any deductions and without additional pay of any kind except as follows:

(1) Locality pay under 5 U.S.C. § 5304;

(2) Special rate supplements under 5 U.S.C. § 5305 and 38 U.S.C. § 7455;

(3) Market pay for VA physicians and dentists under 38 U.S.C. § 7431;

(4) Other locality payments or special rate supplements that are equivalent to locality payments under 5 U.S.C. § 5304 or special rate supplements under 5 U.S.C. § 5305 and 38 U.S.C. § 7455.

b. The following types of payments are not equivalent to locality pay or special rate supplements and should not be automatically treated as basic pay under 5 U.S.C. § 5538. They are not to be used for computing reservist differential.

- (1) Law enforcement availability pay under 5 U.S.C. § 5545a;
- (2) Administratively uncontrollable overtime pay under 5 U.S.C. § 5545(c)(2);
- (3) Standby duty pay under 5 U.S.C. § 5545(c)(1);
- (4) Straight-time portion of firefighter overtime pay received by firefighters covered by 5 U.S.C. § 5545b, and
- (5) Physicians' comparability allowances under 5 U.S.C. § 5948.

c. For reservists on pay retention under 5 U.S.C. § 5363, the additional pay above the range maximum because of a retained rate is not considered basic pay; the maximum rate of basic pay of the applicable rate range is considered the employee's rate of basic pay for the purpose of computing reservist differential.

d. Reservist differential is not categorized as civilian basic pay for any purpose (e.g., retirement, life insurance). Reservist differential is a payment not related to the performance of civilian duty, therefore the receipt of reservist differential does not affect an employee's civilian pay and leave status. Although the employee is considered to be in a leave without pay-uniformed service (LWOP-US) status, other provisions and entitlements that are linked to an employee's pay and leave status are not affected by reservist differential.

e. An employee is considered to be in a civilian pay status when using paid time off but not when receiving reservist differential. Paid time off includes military leave, annual leave, sick leave, excused absence, holiday time off, time off as an award, compensatory time off, credit hours, or any other paid time off to the employee's credit. Employees are entitled to use their military leave as applicable.

**NOTE:** *Use of military leave under 5 U.S.C. § 6323(b) entitles an employee to, during and because of such service, to leave without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance or efficiency rating, however, any such leave granted shall not exceed 22 days of leave within a calendar year. When employees use military leave, their civilian pay is offset by the amount of military pay and allowances they receive while using their military pay. Employees may use military leave or claim reservist differential, but not both for the same period.*

## 9. PROJECTING CIVILIAN BASIC PAY RATES

a. The HRO is responsible for projecting a rate of civilian basic pay for all employees except those holding SES, Title 38 SES-equivalent, and SL appointments. The Corporate Senior Executive Management Office (CSEMO) is responsible for projecting a rate of civilian basic pay for Senior Executive Service (SES), Title 38 SES-Equivalent, and Senior Level (SL) employees. The projected rate will be based on the rate that would have been payable for each pay period within a qualifying

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period but for the call to active duty. The projected rate of basic pay should be determined using those policies consistent with USERRA, under which employees are credited with any pay adjustment that, with reasonable certainty, would have occurred but for service in the military. The projected rate of basic pay used in computing reservist differential does not affect an employee's actual basic pay entitlement.

b. Pay adjustments that should be applied in the computation of an employee's projected rate of civilian basic pay are: general pay adjustments, including locality pay and special rate adjustments; within-grade increases; career ladder promotion increases; performance-based basic pay adjustments and other basic pay adjustments as long as the adjustments would have occurred with reasonable certainty. The projected adjustment takes effect at the time the adjustment otherwise would have been made except for the call to active duty.

**10. PROCESSING PAYMENTS**

a. Employees are responsible for providing his/her activation orders to the HRO prior to, or as soon as possible thereafter, his/her scheduled date of deployment and any modified or amended orders. Once deployed, employees are responsible for providing copies of their military LES as soon as they are available. Based on the local process established by the HRO, employees may send their LES to the HRO who will then forward them to the local payroll office, or employees may send their LES directly to the local payroll office. HROs must provide employees with the addresses to send their LESs via surface mail and e-mail. All LES must be date-stamped with the date received as reservist differential payments are due to be paid not later than 8 weeks following the civilian salary pay date provided the employee submits the necessary documents, i.e., activation orders and appropriate LES. If an employee fails to submit the necessary documents in a timely manner, scheduled payments may be delayed consistent with the employee's delayed submission.

b. The HRO is responsible for reviewing activation orders and any amendments to determine if the employee's call to active duty period qualifies for reservist differential (see paragraph 7a and b above). After confirming that an activation period qualifies, the HRO must project an employee's rate of civilian basic pay during the activation and provide information to the local payroll office for computing the reservist differential. Information to the payroll office must include the following:

- (1) Employee's Name
- (2) Employee's Last 4 SSN
- (3) Branch of Service
- (4) VA Organization
- (5) Mobilization start date
- (6) Mobilization end date

(7) Projected rate(s) of basic pay during mobilization

(8) Effective date(s) of projected rate(s)

(9) Activation authority contained in orders

**NOTE:** *Activation orders, including all amendments or modifications will be maintained in the employee's Electronic Official Personnel Folder (e-OPF).*

c. Upon receipt of the above information from the HRO and the employee's military LES, the local payroll office will compute the reservist differential, and if applicable, the dates for which interest is payable.

d. Under the Defense Finance and Accounting Service (DFAS), reservist differential will be entered via Remedy Ticket by the HRO. Once the local payroll office has performed the calculations, they will provide the HRO with the information required to submit the Remedy Ticket(s). Generally, a Remedy Ticket must be submitted for each pay period that the reservist differential payment is payable.

e. Once an employee returns to duty, he/she must provide a copy of their DD 214 or other official document to confirm their active duty end date. Employees should be reminded to submit any subsequent military LES for the activation period as the local payroll office will reconcile payments to ensure payments are accurate. Overpayments will be subject to normal debt collection procedures; underpayments will result in additional payment.

f. For the provisions addressed in subparagraphs a through e above, CSEMO will work with the appropriate HRO to identify the payment procedures for SES, Title 38 SES-equivalent, and SL employees.

**11. ADDITIONAL GUIDANCE.** Additional information, such as Frequently Asked Questions for employees and links to OPM guidance is available on the [Office of Human Resources Web site](#).

## **12. REFERENCES**

a. 5 U.S.C. 5538

b. 10 U.S.C. 101(a)(13)(B)

c. 38 U.S.C. Chapter 43

d. Public Law 111-8, March 11, 2009

e. Public Law 111-117, December 16, 2009